

Internal Revenue Service

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Date:

September 21, 2010

Legend:

Fund =

Trust =

Company =

State =

Offshore =

Total Return Index =

Excess Return Index =

Total Return Subindex =

Excess Return Subindex =

Amount =

a =

b =

x =

y =

Rate =

Dear :

This is in response to a letter dated April 30, 2010, and subsequent correspondence, requesting rulings that (1) income from commodity-linked notes is described in section 851(b)(2) of the Internal Revenue Code and (2) income earned by Fund from an investment in its wholly-owned subsidiaries that qualify as controlled foreign corporations ("CFCs") is income under section 851(b)(2) of the Internal Revenue Code.

FACTS

Fund is a series of Trust and is classified as a corporation for federal income tax purposes. Trust is a business trust organized under the law of State. Fund is registered

as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. ("the 1940 Act").

Fund intends to qualify each year as a regulated investment company ("RIC") under section 851 of the Code.

Fund intends to invest in two wholly owned subsidiaries ("Subs") to be formed under the laws of Offshore, a non-United States jurisdiction. Each Sub will be formed as a Company. A Company provides limited liability for its shareholders. It is represented that each Sub will file an election on Form 8832 to be treated as a corporation for federal income tax purposes under section 301.7701-3 of the Procedure and Administration Regulations.

Fund represents that although Subs do not expect to be registered as investment companies under the 1940 Act, they will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related Securities and Exchange Commission guidance pertaining to asset coverage with respect to investments that would apply if Subs were registered under the 1940 Act.

Fund will invest a portion of its assets in Subs, subject to the limitations set forth in section 851(b)(3) of the Code.

Subs will invest in commodity-related instruments. Such instruments include commodity index futures, commodity futures, options, exchange-traded funds, forwards, swaps, structured notes, exchange-traded and over-the-counter derivative instruments, and equity-like securities that provide direct exposure to commodity prices. Subs may invest in new instruments as they are developed.

Fund also intends to invest in four commodities-linked notes (Notes A, B, C and D).

Note A will be issued at the par value of Amount. Its payout formula will be determined with reference to the value of the Excess Return Index. Its term will be fourteen months. As holder of Note A, Fund will have the right to put Note A to its issuer at the calculated redemption price based on the closing value of the Excess Return Index as of the end of the next day after notification to the issuer. In addition, if the Excess Return Index value falls $x\%$ from its value at the time Note A is acquired, Note A will automatically redeem based on a redemption price calculated using the closing Excess Return Index value of the following day.

The repayment obligation upon early redemption, automatic redemption, or at maturity is calculated under a formula. The formula provides for repayment of the face amount of Note A, increased or decreased by an amount equal to the face amount of Note A multiplied by a leverage factor of y multiplied by the percentage of the increase

or decrease of the beginning Commodity Index value compared to the ending Commodity Excess Return Index value for the applicable period (“leveraged amount” or “notional value”). To this result is added an amount that reflects interest on Note A at a coupon rate of Rate less a basis points. From this amount is subtracted an annual fee of b basis points of the leveraged amount.

The terms of Note B will be the same as those of Note A, except that the Total Return Index will be used in lieu of the Excess Return Index.

The terms of Note C will be the same as those of Note A, except that the Excess Return Subindex will be used in lieu of the Excess Return Index.

The terms of Note D will be the same as those of Note A, except that the Total Return Subindex will be used in lieu of the Excess Return Index.

Fund makes the following representations with respect to the Notes:

- (1) The issuers of the Notes will receive payment in full of their purchase prices substantially contemporaneously with the delivery of the Notes;
- (2) The Fund, while holding the Notes, will not be required to make any payment to the issuers of the Notes in addition to the purchase price paid for the Notes, whether as margin, settlement payment, or otherwise during the life of the Notes or at maturity;
- (3) The issuers of the Notes are not and will not be subject by the terms of the instrument to mark-to-market margining requirements of the Commodities Exchange Act, 7 USC 2, as amended (“CEA”); and
- (4) the Notes are not and will not be marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

LAW

Section 851(b)(2) of the Code provides that a corporation is not considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain sources. Under section 851(b)(2), qualifying income includes

. . . dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if –

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise during the life of the Notes or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

In addition, the flush language of section 851(b) of the Code provides that, for purposes of section 851(b)(2), the term “dividends” includes amounts included in gross income under sections 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under sections 959(a)(1) or 1293(c), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a CFC as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock, is owned by United States shareholders on any day during the corporation’s taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total voting power of a foreign corporation.

Section 951(a)(1) of the Code provides that if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of the corporation and who owns stock in it on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder’s pro rata share of the CFC’s subpart F income for the taxable year.

Section 952(a)(2) defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Section 954(c)(1) defines foreign personal holding company income to include dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

Subs’ investments may generate foreign personal holding company income under section 954(c), which is subpart F income. Fund would therefore include in income Subs’ subpart F income for the taxable year in accordance with section 951.

ANALYSIS AND CONCLUSION

Fund has represented that Subs will be wholly owned subsidiaries of Fund. Fund is a United States person. Based upon Fund’s representations, Subs will qualify as CFCs under these provisions.

Based on the facts as represented, we rule that: (1) income from the Notes is qualifying income described in section 851(b)(2) of the Code and (2) the subpart F income attributable to Fund from its investment in Subs is income derived with respect to the Fund’s business of investing in the stock of Subs and thus constitutes qualifying income under section 851(b)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether the Fund qualifies as a RIC under subchapter M of the Code.

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
Financial Institutions and Products